Public Prosecutor v Ramayah a/l Ramalu and another appeal

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS A-05–233–08 OF 2014 AND A-05–279–10 OF 2014
AZIAH ALI, AHMADI ASNAWI AND ZAMANI A RAHIM JJCA
7 JUNE 2016

Criminal Law — Penal Code — s 302 — Accused persons charged for murder of deceased and causing hurt to another person — Deceased stab in chest — Defence that accused person stabbed deceased by accident — Whether stab wound sustained in deceased's chest matched defence of accident — Whether defence raised reasonable doubt against prosecution's case — Whether defence an afterthought and mere denial

One evening, the deceased's nephew ('PW5') was informed by the deceased's son ('Heeman') that there was a fight in front of the deceased's house. Upon his arrival at the deceased's house, PW5 saw a fight between Heeman's family and the respondent's family. The second respondent held a *parang*. The deceased tried to prevent the *parang* from hitting someone and managed to get hold of the said *parang*. However, the deceased was stabbed in the chest by the second respondent. PW5 managed to detain the second respondent but the first respondent pulled the *parang* out of the deceased's chest and swung the same at him. The *parang* hit and injured his right thumb. The deceased succumbed to her injuries. The pathology report revealed and confirmed that the cause of the deceased's death was due to stab wound to the chest. The respondents were jointly tried. The respondents were a father and son duo. The first respondent was initially charged for committing an offence under s 324 of the Penal Code ('the Code') for causing hurt to PW5 by means of a *parang* while the second respondent was charge for committing an offence under s 302 of the same Code for causing the death of the deceased. At the end of the prosecution's case, the first respondent was levelled with a second charge under s 302 of the Code. Satisfied that the prosecution had established a prima facie case, the respondent were called to enter their defence. The second respondent averred that he did not intend to stab the deceased but had slipped and lost his balance ('tergelincir') and in the process had accidentally stabbed the deceased. The first respondent, on the other hand, submitted that he was not at the scene at the time the deceased was stabbed and was not involved in the injury sustained by PW5. At the end of the defence's case, the first respondent was acquitted and discharged of both the charges levelled against him. Meanwhile, the second respondent was found guilty and convicted on a lesser charge under s 304(b) of the Code amended by the trial judge and was sentenced to six years imprisonment. Hence, the present appeals. The public prosecutor's appeals were anchored upon the broad ground that in so far as the charges under s 302

of the Code were concerned, the trial judge erred in law and in fact when His Lordship found that the prosecution failed to prove its case against both respondents beyond a reasonable doubt and thereafter caused the acquittal and discharged of both the respondents of the same. The prosecution submitted that the defence's version that more than 20 people were involved in the fight was not put or raised to any of the witnesses during the prosecution's case. Neither was the second respondent's defence that he did not intend to stab the deceased but had slipped and lost his balance and in the process had accidentally stabbed the deceased, ever put to the prosecution witnesses, in particular, PW5 and the investigating officer ('PW4'). The prosecution also submitted that the defence of the first respondent that he was not at the scene at the time the deceased was stabbed and was not involved in the injury sustained by PW5 was contradicted by his own police reports. The prosecution further submitted that both the respondents had contradicted each other in material particulars in their testimonies in court. Hence, the prosecution submitted that the respondents' defences were mere afterthought and bare denials.

Held:

(1) The defence canvassed by the second respondent was not raised nor put to any of the prosecution witnesses, in particular PW5 and PW4, rendering it to be a recent invention or afterthought. The second respondent had also failed to put his defence of slipping, losing his balance and in the process had accidentally stabbed the deceased to the forensic pathologist ('PW8'), thus denying access of the said defence from forensic scrutiny. PW8 would have been in position to verify the probability or otherwise of such defence from the nature of the stab wound, the angle of entry causing the stab wound, the depth and length of the wound, the weapon used to inflict the wound, the position of the second respondent at the time he inflicted the wound, the position of the deceased when the wound was inflicted upon her and other incidental matters (see paras 43 & 48).

(2) The deceased was attacked by the second respondent while using the said *parang* before the fatal injury was inflicted. The second respondent aimed and stabbed the deceased at the most vulnerable and exposed part of the deceased's person, ie the centre of her chest that directly hit her heart. The injuries suffered by the deceased were indeed grave and serious. On the facts, viewed objectively, there could be no doubt that the said injuries carried a high probability to cause death (see paras 49, 60 & 63).

(3) The injuries were sufficient to cause death in the ordinary cause of nature. It was immaterial whether the second respondent had the subjective knowledge of the consequence of inflicting such injuries upon the deceased or whether he had the knowledge that the injuries inflicted

carried a high probability of causing the death of the deceased or whether he intended the direct consequence of causing those injuries upon the deceased. It also did not matter that there was no intention even to cause an injury of a kind that was sufficient to cause death in the ordinary cause of nature or whether the second respondent harboured an intention to cause the death of the accused at the material time or otherwise or that there was no knowledge that the act of the kind committed by him will be likely to cause death (see paras 63–65).

(4) The second respondent's defence was untenable in the light of the medical evidence that supported the uncontroverted testimony of PW5. The prosecution's appeal against the second respondent was allowed. He was guilty of the original charge levelled against him under s 302 of the Code. The High Court's conviction and sentence under s 304(b) of the same Code was set aside. In view of the second respondent's age at the time of the commission of the offence, he was ordered to be detained at the pleasure of the Ruler in accordance with s 97(1) and (2) of the Child Act 2001 (see paras 67–68).

(5) Upon the totality of the evidence thrown at the first respondent, there existed a lingering doubt of the role and complicity of the first respondent in the death of the deceased. The first respondent was verily entitled to benefit from the said doubt. The prosecution's appeal against the first respondent was dismissed. The acquittal and discharge of the first respondent on both the charges as ordered by the High Court were affirmed (see paras 76–77).

[Bahasa Malaysia summary

Suatu petang, anak saudara lelaki si mati ('PW5') telah diberitahu oleh anak lelaki si mati ('Heeman') bahawa terdapat pergaduhan di hadapan rumah si mati. Setelah tiba di rumah si mati, PW5 melihat satu pergaduhan antara keluarga Heeman dan keluarga responden. Responden kedua telah memegang sebilah parang. Si mati telah cuba menghalang parang itu daripada menikam seseorang dan berjaya memegang parang tersebut. Walau bagaimanapun, si mati telah ditikam di bahagian dada oleh responden kedua. PW5 telah berjaya menahan responden kedua tetapi responden pertama telah menarik parang itu keluar daripada dada si mati dan menghayun yang sama ke arahnya. Parang itu telah terkena dan mencederakan ibu jari kanannya. Si mati telah meninggal dunia akibat kecederaannya. Laporan ahli patologi mendedah dan mengesahkan bahawa sebab kematian si mati adalah akibat luka tikaman di dada. Responden-responden secara bersama telah dibicarakan. Responden-responden ialah gandingan bapa dan anak. Responden pertama pada mulanya telah dituduh kerana melakukan kesalahan di bawah s 324 Kanun Keseksaan ('Kanun') kerana menyebabkan kecederaan kepada PW5 dengan menggunakan sebilah parang manakala responden kedua dituduh melakukan kesalahan di bawah s 302 Kanun sama kerana menyebabkan

kematian si mati. Di akhir kes pendakwaan, responden pertama telah dituduh dengan pertuduhan kedua di bawah s 302 Kanun. Berpuas hati dengan pendakwaan yang telah membuktikan kes prima facie, responden-responden telah dipanggil untuk memasukkan pembelaan mereka. Responden kedua telah menegaskan bahawa dia tidak berniat untuk menikan si mati tetapi telah tergelincir dan hilang imbangannya dan dalam proses itu secara tidak sengaja telah menikan si mati. Responden pertama, sebaliknya, telah berhujah bahawa dia tidak berada di tempat kejadian pada masa si mati ditikam dan tidak terlibat dalam kecederaan yang dialami oleh PW5. Di akhir kes pembelaan, responden pertama telah dilepas dan dibebaskan daripada kedua-dua pertuduhan yang dibuat terhadapnya. Sementara itu, responden kedua telah didapati bersalah dan disabitkan dengan pertuduhan yang lebih ringan di bawah s 304(b) Kanun yang dipinda oleh hakim perbicaraan dan telah dihukum enam tahun penjara. Justeru, rayuan-rayuan ini. Rayuan-rayuan pendakwa raya berdasarkan alasan luas yang setakat mana pertuduhan-pertuduhan di bawah s 302 Kanun adalah berkaitan, hakim perbicaraan terkhilaf dari segi undang-undang dan fakta apabila Yang Arif mendapati bahawa pendakwaan telah gagal untuk membuktikan kesnya terhadap kedua-dua responden melampaui keraguan munasabah dan selepas itu menyebabkan pelepasan dan pembebasan kedua-dua responden. Pendakwaan berhujah bahawa versi pembelaan bahawa lebih daripada 20 orang terlibat dalam pergadhan itu tidak dikemukakan atau ditimbulkan aoleh mana-mana saksi sepanjang kes pendakwaan. Pembelaan responden kedua juga yang mana dia tidak berniat untuk menikam si mati telah tergelincir dan hilang imbangannya dan dalam proses itu tanpa sengaja menikan si mati, telah dikemukakan kepada saksi-saksi pendakwaan, khususnya, PW5 dan pegawai siasatan ('PW4'). Pendakwaan juga berhujah bahawa pendakwaan responden pertama bahawa dia tidak berada di tempat kejadian pada masa si mati ditikam dan tidak terlibat dalam kecederaan yang dialami oleh PW5 adalah bercanggah dengan laporan-laporan polisnya sendiri. Pendakwaan selanjutnya berhujah bahawa kedua-dua responden telah bercanggah antara satu sama lain dalam butiran penting keterangan mereka di mahkamah. Justeru, pendakwaan berhujah bahawa pembelaan responden hanya suatu yang telah difikirkan kemudian dan penafian kosong.

Diputuskan:

(1) Pembelaan yang dibuat oleh responden kedua tidak ditimbul atau dikemukakan oleh mana-mana saksi pendakwaan, khususnya PW5 dan PW4, menyebabkan ia menjadi suatu yang baru dicipta atau difikirkan kemudian. Responden kedua juga telah gagal mengemukakan pembelaannya berhubung tergelincir, hilang imbangannya dan dalam proses itu tanpa sengaja telah menikam si mati kepada ahli patologi forensik ('PW8'), oleh itu menafikan akses pembelaan tersebut daripada penelitian forensik. PW8 berada dalam kedudukan untuk mengesahkan

kebarangkalian itu atau sebaliknya pembelaan sebegini berdasarkan sifat luka tikaman itu, sudut kemasukan yang menyebabkan luka tikaman itu, kedalaman dan panjang luka, senjata yang digunakan untuk menyebabkan luka itu, kedudukan responden kedua pada masa dia menyebabkan luka itu, kedudukan si mati semasa luka itu terjadi kepadanya dan perkara sampingan lain (lihat perenggan 43 & 48).

(2) Si mati telah diserang oleh responden kedua semasa menggunakan parang tersebut sebelum kecederaan maut itu berlaku. Responden kedua telah menuju dan menikam si mati pada bahagian si mati yang paling sensitif dan terdedah, iaitu di bahagian tengah dadanya yang terus terkena jantungnya. Kecederaan yang dialami oleh si mati sememangnya parah dan serius. Berdasarkan fakta, jika dilihat secara objektif, tidak patut adalah keraguan bahawa kecederaan tersebut membawa kebarangkalian tinggi untuk menyebabkan kematian (lihat perenggan 49, 60 & 63).

(3) Kecederaan itu mencukupi untuk menyebabkan kematian dalam sebab biasa sifatnya. Ia tidak penting sama ada responden kedua mempunyai pengetahuan subjektif tentang akibat menyebabkan kecederaan sedemikian ke atas si mati atau sama ada dia mempunyai pengetahuan bahawa kecederaan yang disebabkan mempunyai kebarangkalian tinggi akan menyebabkan kematian si mati atau sama ada dia mempunyai niat tentang akibat langsung menyebabkan kecederaan itu ke atas si mati. Ia juga tidak kira jika tiadak ada niat langsung pun untuk menyebabkan jenis kecederaan sebegitu yang mencukupi untuk menyebabkan kematian dalam sebab biasa sifatnya atau sama ada responden kedua mempunyai niat untuk menyebabkan kematian tertuduh pada masa matan atau sebaliknya atau bahawa tidak ada pengetahuan yang tindakan jenis itu yang dilakukan olehnya mungkin akan menyebabkan kematian (lihat perenggan 63–65).

(4) Pembelaan responden kedua tidak dapat dipertahankan berdasarkan keterangan perubatan yang menyokong keterangan PW5 yang tidak dipertikaikan. Rayuan pendakwaan terhadap responden kedua telah dibenarkan. Dia bersalah atas pertuduhan asal yang dibuat terhadapnya di bawah s 302 Kanun. Sabitan dan hukuman Mahkamah Tinggi di bawah s 304(b) telah diketepikan. Berdasarkan umur responden kedua pada masa perlakuan kesalahan itu, dia telah diperintahkan untuk ditahan atas perkenan Raja menurut s 97(1) dan (2) Akta Kanak-Kanak 2001 (lihat perenggan 67–68).

(5) Berdasarkan keseluruhan keterangan yang dikemukakan terhadap responden pertama, terdapat keraguan tentang peranan dan penglibatan responden pertama dalam kematian si mati. Responden pertama sesungguhnya berhak mendapat manfaat daripada keraguan tersebut. Rayuan pendakwaan terhadap responden pertama telah ditolak.

Pelepasan dan pembebasan responden pertama atas kedua-dua pertuduhan sepertimana yang diperintahkan oleh Mahkamah Tinggi adalah disahkan (lihat perenggan 76–77).] A

Notes

For cases on s 302, see 4(2) *Mallal's Digest* (5th Ed, 2015) paras 2141–2279. B

Cases referred to

Alcontara a/l Ambross Anthony v Public Prosecutor [1996] 1 MLJ 209, FC (refd)
Public Prosecutor v Visuvanathan [1978] 1 MLJ 159 (refd) C

Legislation referred to

Child Act 2001 s 97(1), (2), (2)(b)
Evidence Act 1950 s 134
Penal Code ss 34, 300(a), (b), (c), (d), 302, 304(b), 324 D
Penal Code [SG] s 300(c)

Asmah bt Musa (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Mohd Fadhli Mat Sutris (Badrul Munir Bukhari & Co) for the first respondent. E
Hasnan Hamzah (Hasnan Hamzah) for the second respondent.

Ahmadi Asnawi JCA:

[1] The two appeals were heard together. The respondent (Ramayah a/l Ramalu) in Criminal Appeal No A-05–233–08 of 2014 is hereinafter referred to as the first respondent and the respondent (Nomalan a/l Ramayah) in Criminal Appeal No A-05–279–10 of 2014 is hence forth referred to as the second respondent. F

G

[2] In the court below, the cases against both the respondents were jointly tried. The first respondent was then referred to as the second accused and the second respondent was referred as the first accused.

H

[3] The first respondent is the father of the second respondent, who at the material time of the commission of the alleged offence, was 16 years and four months old.

[4] The first respondent was initially charged of committing an offence under s 324 of the Penal Code ('the PC') for causing hurt to one Jivakumar a/l Karunagaran by means of a *parang* while the second respondent was charge of committing an offence under s 302 of the same Code for causing the death of a female, one Kalarani a/p Vedi. I

[5] At the end of the prosecution's case, the first respondent was levelled with a second charge under s 302 of the PC for causing the death of the same female, read together with s 34 of the same Code.

[6] The charge against the second respondent was correspondingly amended to provide for the insertion of s 34 of the PC to run in tandem with the second charge against the first respondent.

[7] Hence, the two charges against the first respondent at end of the prosecution's case are as follows:

> First Charge:
>
> Bahawa kamu pada 12.12.2009 jam lebih kurang 9.30 malam, di hadapan rumah No. 39, Taman Segari di dalam Daerah Manjong, di dalam Negeri Perak Darul Ridzuan telah dengan sengaja mendatangkan cedera ke atas lelaki India bernama Jivakumar a/l Karunagaran (No: KP: 8703230085117) dengan menggunakan parang. Oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 324 Kanun Keseksaan.
>
> Second Charge:
>
> Bahawa kamu bersama-sama dengan Nomalan a/l Ramayah (No. KP: 930826-08-5145) pada 12hb. Disember 2009, jam lebih kurang 9.30 malam, di hadapan rumah nombor 39, Taman Segari, Segari, di dalam Daerah Manjong, di dalam Negeri Perak, dengan niat bersama telah melakukan suatu pembunuhan dengan menyebabkan kematian kepada Kalarani a/p Vedi (No. KP: 770621-08-7614). Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s. 302 Kanun Keseksaan dan dibaca bersama seksyen 34 Kanun Keseksaan.

[8] The amended charge against the second respondent is as follows:

> Bahawa kamu bersama-sama dengan Ramayah a/l Ramalu (No. KP:650119-08-6185) pada 12hb. Disember 2009, jam lebih kurang 9.30 malam, di hadapan rumah nombor 39, Taman Segari, Segari, di dalam Daerah Manjong, di dalam Negeri Perak, dengan niat bersama telah melakukan suatu pembunuhan dengan menyebabkan kematian kepada Kalarani a/p Vedi (No. KP: 770621-08-7614). Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan dan dibaca bersama seksyen 34, Kanun Keseksaan.

[9] At the end of the defence's case, the first respondent was acquitted and discharged of both the charges levelled against him.

[10] Meanwhile, the second respondent was found guilty and convicted on a lesser charge under s 304(b) of the PC as amended by the learned trial judge and was sentenced to six years imprisonment.

[11] The appeals before us by the public prosecutor were in respect of the said decisions. A

[12] We heard the appeals and after due consideration of the facts and issues raised, we dismissed the public prosecutor's appeal against both the orders of acquittal and discharged in respect of the first respondent. B

[13] However, we allowed the public prosecutor's appeal in respect of the decision against the second respondent. We found him guilty on the original charge under s 302 of the PC. In view of his age at the time of the commission of the offence, we ordered the second respondent to be detained at the pleasure of His Majesty, the Sultan of Perak, in accordance with s 97(1) and (2)(b) of the Child Act 2001. C

[14] We now give our grounds. D

THE CASE FOR THE PROSECUTION

[15] Both the respondents stayed at house No 41, Taman Segari, Manjong, not far from the deceased's house (Kalarani a/p Vedi) at No 44 of the same housing estate. E

[16] In the evening of 12 December 2009, PW5 (Jivakumar a/l Karunagaran) was at a certain coffee shop at Taman Segari at Manjong. He was the deceased's nephew. At about 9.30pm, he received a telephone call from one Heeman, the deceased's son, of a fight in front of the deceased/Heeman's house. He rushed back to Heeman's house. F

[17] Heeman has since died (on 4 September 2010) as indicated by his death certificate, exh P58, at *Jld* 3, *rekod rayuan* ('RR'). G

[18] At the scene in front of Heeman's house, PW5 saw a fight between Heeman's family and the respondent's family. He also saw the second respondent having a *parang* with him. PW5 identified exh P42A as the *parang* in question. H

[19] Then PW5 saw his aunty, the deceased, whom he called 'Helvi', running to prevent the *parang* (P42A) held by second respondent from hitting someone. Next he saw the deceased attempting to get hold of the said *parang* held by the second respondent. However, the deceased was stabbed by the second respondent on the centre of her chest. I

[20] PW5 then rushed towards the deceased in an attempt to save the

deceased. He managed to detain the second respondent. He saw the said *parang* still sticking on the deceased's chest. At the same time SP5 saw the first respondent approaching the deceased and further thrusting the *parang* onto the deceased's chest.

[21] PW5 added that the first respondent then pulled the said *parang* out of the deceased's chest and swung the same at him. The *parang* hit and injured his right thumb.

[22] PW5 then fled the scene for his life. He returned a few minutes later and with the help of his brother, one Santhiran, took the deceased to Hospital Seri Tanjong. By then the deceased had lost consciousness. The deceased subsequently died.

[23] The pathologist, SP8 (Dr Rohayu bt Shahar Adnan) found and confirmed that the cause of the deceased's death was due to stab wound to the chest severing the major thoracic organs that resulted in blood exsanguinations leading to her demise. Her full report — *laporan bedah siasat* — is exh P24 at *Jld* 3, RR. She testified, at p 58, *Jld* 1, RR, that:

> Daripada pemeriksaan saya, kecederaan yang menyumbang kepada kematian si mati adalah kecederaan no. 5 di muka surat 3 P24, iaitu luka tikaman yang telah menembusi jantung sebelah kanan si mati termasuk pembuluh darah kedua-dua bahagian tengah paru-paru kanan dan kiri sehingga ke belakang rangka dada dengan kedalaman 22 cm. Ini adalah kerana luka tersebut telah mengenai bahagian kanan jantung termasuk salur darah yang mengakibatkan jantung tidak dapat berdegup dan kebocoran salur darah menyebabkan pendarahan yang banyak.
>
> Kedua-dua keadaan itu membawa kepada kematian. Kecederaan-kecederaan itu boleh membawa kepada kematian. Punca kecederaan itu adalah luka tikaman kerana ia lebih dalam dari panjangnya. Kedalaman luka 22 cm dan panjang luka hanya 7.5 cm.

[24] PW8 also testified that the said injuries could have been caused by a rather heavy sharp object, the like of a *parang* or a big chopper knife as it has cut through the deceased's fourth ribs.

[25] At the end of the prosecution's case, the learned trial judge found that the prosecution had established a prima facie case against the respondents on the charges proffered and ordered the respondents to enter their defence upon their respective charges.

[26] We were in agreement with the findings by the learned trial judge.

THE DEFENCE CASE

[27] Both the respondents testified on oath.

[28] The second respondent testified that there is a small river within the vicinity of the housing scheme.

[29] On the day in question, the second respondent saw Heeman (the deceased's son) with two others (Kalippa and Seenu) removing the wooden planks that the first respondent had stuck into the ground by the river banks, resulting in an altercation amongst them. The deceased and the first respondent then came to the scene. Soon after the altercation abated and the parties left for their respective homes.

[30] However, not long after the altercation at the river bank, Heeman came to the respondents house where both the respondents, DW5 (Paaventhan a/l Ramayah) and PW12 (Loo Wan Jew) were resting and chit-chatting.

[31] The said Heeman stood in front of the respondents' house, armed with a piece of rattan. Heeman then went on to disparage and abuse them, employing vulgar language.

[32] The second respondent testified that he heard Heeman calling his uncle, one 'Apoi' through his mobile phone, requesting Apoi to come the scene. When Apoi arrived at the scene, the second respondent further heard Apoi calling his friends in three motorcars to come to the scene.

[33] The second respondent testified that the said Apoi took out a *parang* and directed the *parang* towards the first respondent. In response, the second respondent said that he kicked Apoi to prevent Apoi from harming the first respondent and tried to seize the *parang* from Apoi. In the midst of the melee, the deceased came in between them. The second respondent further testified that he did not intend to stab the deceased but had slipped/slided and lost his balance ('tergelincir') and in the process, had unintentionally/accidentally stabbed the deceased on her chest. The second respondent added that there were more than 20 people involved in the fight.

[34] The second respondent further testified that he was taken aback and got frightened. He pulled the *parang* from the deceased's chest and ran inside PW12's house. He saw the first respondent, SD5 and his mother already inside PW12's house. Then he surrendered the said *parang* to PW12.

[35] The second respondent also averred that the first respondent was not at the scene of the fight when the deceased was accidentally stabbed.

[36] At end of the defence, the learned trial judge accepted the testimonies of the defence witnesses and acquitted and discharged the first respondent of the two charges levelled against him. Meanwhile the learned trial judge amended the charge against the second respondent to one under s 304(b) of the PC and found him guilty and stand convicted of the same. The second respondent was henceforth sentenced to a six years' imprisonment term.

THE APPEAL BEFORE US

[37] The public prosecutor's appeals were anchored upon the broad ground that in so far as the charges under s 302 of the PC are concerned, the learned trial judge had erred in law and in fact when His Lordship found that the prosecution had failed to prove its case against both the respondents beyond a reasonable doubt and thereafter caused the acquittal and discharged of both the respondents of the same.

[38] The learned deputy public prosecutor ('DPP') submitted that the defence's version that more than 20 people were involved in the fight was not put or raised to any of the witnesses during the prosecution's case. Neither was the second respondent's defence that he did not intend to stab the deceased but had slipped and lost his balance ('tergelincir') and in the process had accidentally stabbed the deceased, ever put to the prosecution witnesses, in particular, PW5 and the investigating officer (PW4, ASP Muniandi a/l Paramichiuan).

[39] The learned DPP also submitted that the defence of the first respondent that he was not at the scene at the time the deceased was stabbed and was not involved in the injury sustained by PW5 was contradicted by his own police reports, exhs P60 and P61.

[40] The learned DPP further submitted that both the respondents had contradicted each other in material particulars in their testimonies in court.

[41] Hence, the learned DPP submitted that the defence of both the respondents were mere afterthought and bare denials without more.

OUR DECISION

The appeal against the second respondent

[42] The second respondent did not deny that he had stabbed the deceased on her chest but was adamant that it was an accidental act when he slipped in the melee and lost his balance and in the process had stabbed the deceased. This was solely the crux of his defence. A

[43] However, we noted and were in agreement with the learned DPP that the said defence canvassed by the second respondent was not raised nor put to any of the prosecution witnesses, in particular PW5 and PW4, rendering it to be a recent invention or afterthought. B

[44] The learned trial judge alluded to the same when he stated, at p 16, *Jld* 1, RR: C

> Walau bagaimanapun, OKT-1 mengakui bahawa dia telah menggunakan parang tersebut untuk menyerang balik lelaki yang memukulnya. Dalam keadaan sedemikian OKT-1 sudah tentu mempunyai pengetahuan serangannya dengan parang pada masa si mati telah datang untuk masuk campur dalam pergaduhan mungkin mengakibatkan kematian pada si mati. Tindakan OKT-1 termasuk di bawah peruntukkan s 304(b) Kanun Keseksaan. *Alasan bahawa dia 'tergelincir' jelas adalah pemikiran terkemudian oleh OKT-1*. Oleh yang demikian adalah didapati bahawa OKT-1 telah melakukan kesalahan dan disabitkan di bawah s 304(b) Kanun Keseksaan ... (Emphasis added.) D E

[45] It is apparent that the learned trial judge had found that the second respondent's defence to be an afterthought, but nevertheless accepted the same unequivocally and had acted upon it. However, His Lordship had failed to properly appraised the same, in particular, its reflection upon the credit worthiness of the second respondent's testimony and the weight to be accorded to such defence. F

[46] We were of the view that being the crux of the second respondent's defence, it is only to be expected that the said defence should feature prominently in the cross-examination of PW5 and PW4. The second respondent's failure to do so had occasioned a breach of the rule of essential justice. Apart from springing surprises, it leaves no room for admission, rebuttal, denial or explanation by the aforesaid prosecution witnesses. The second respondent's testimony has no chance of being tested and the prosecution was unable to check on whether the second respondent's version of the facts is true or false to avoid the imputation that the defence is a recent invention — see *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209. G H I

[47] It is also incumbent upon the defence to put forth his case at the earliest reasonable opportunity. The second respondent paid no heed to the said age — old basic principle. Hence, as the second respondent's defence was revealed for

the first time when he makes his defence from the witness box, thus it had detracted from the weight to be accorded to the said defence on account that it has been rendered to be a recent invention. The learned trial judge had failed to take into account this detracting factor in his appraisal of the second respondent's defence.

[48] The second respondent had also failed to put his defence of slipping, losing his balance and in the process had accidentally stabbed the deceased to PW8, the forensic pathologist, thus denying access of the said defence from forensic scrutiny. PW8 would have been in position to verify the probability or otherwise of such defence from the nature of the stab wound, the angle of entry causing the stab wound, the depth and length of the wound, the weapon used to inflict the wound, the position of the second respondent at the time he inflicted the wound, the position of the deceased when the wound was inflicted upon her and other incidental matters thereto. She could even have re-enacted the scene of the stabbing incident according to the version of the second respondent for clarity and precision to the advantage of the second respondent's defence if given sufficient details by the second respondent. She may have even agree with the second respondent's version of the facts. As it were, none was raised by the second respondent to PW8. In fact PW8 was not cross-examined at all. Hence, the second respondent's defence could not be tested nor subjected to a forensic verification exercise.

[49] PW8 testified that the fourth injury at p 3 of her post-mortem report (exh P24) and seen in the photographs exhs P10(20) and (21) ie subcutaneous bruising on the deltoid and wrist of the left upper limb each measured 1 x 1 and 7 x 5cm respectively, were in fact defensive wounds. She was not cross-examined on this issue though. Hence, it put paid to the second respondent's version that the fatal stab injury was occasioned accidentally. We surmised that the deceased was in fact attacked by the second respondent while using the said *parang* before the fatal injury was inflicted.

[50] We were further of the considered view that the stab wound suffered by the deceased is too deep and long (22cm deep and 7.5cm in length) for it to have been caused by accident in the version adduced by the second respondent. It could only have been caused by an intentional stabbing as testified by PW5 where considerable force was applied such that it cut through the sternum bone across the fourth ribs and fourth intercostal spaces as testified by PW8.

[51] The second respondent's testimony equally had suffered serious discrepancies. In the cross-examination of PW5, it was put to PW5 '... dalam pergelutan antara Heeman dan OKT1, si mati telah datang di tengah-tengah

mereka dan dengan tidak sengaja parang terkena si mati ...' to which PW5 disagreed. The issue of the second respondent slipping and losing his balance was not raised at all.

[52] The second respondent's caution statement (exh D67) though was consistent with the cross-examination above:

> Saya menggunakan pisau itu untuk menyerang balik lelaki tersebut tetapi secara tiba-tiba seorang perempuan yang saya kenali dengan nama Kalairani telah menghalang saya dengan berada di tengah-tengah antara saya dengan lelaki itu menyebabkan pisau tersebut telah mengenai badannya. Perempuan itu tiba-tiba jatuh saya kemudiannya lari masuk ke dalam sebuah rumah milik seorang lelaki Cina ...

[53] In court, as repeated a number of times, the second respondent testified that in the midst of the melee involving more than 20 people, the deceased came in between him and Apoi. He slipped and in the process had accidentally stabbed the deceased on her chest.

[54] There was no explanation by the second respondent to account for the discrepancies enumerated above. Neither did the learned trial judge address his mind to the same. Nevertheless, it illustrates the second respondent's propensity of changing his evidence as and when it suits him. The second respondent agreed though that PW5 was at the scene and could witness the incident.

[55] In our view, PW5's evidence in relation to the stabbing of the deceased by the second respondent is uncontroverted despite the barrage of cross-examination levelled against him. Nevertheless, the learned trial judge opted to ignore his evidence but gave no reason for doing so, an imperative exercise in the evaluation of witnesses, more so when the evidence of a principal witness is rejected.

[56] Additionally, the learned trial judge had clearly fallen into error when he said '... keterangan SP5 tidak ada keterangan sokongan oleh mana-mana saksi lain yang melihat tikaman oleh OKT1 terhadap si mati ...' (at p 16, *Jld* 1, RR). However, under the law, there is no requirement for PW5's evidence to be corroborated. Any requirement for his evidence to be corroborated will conflict with s 134 of the Evidence Act 1950, which provides that no particular number of witnesses shall be required for proof of any fact.

[57] On a charge under s 302 of the PC, the imperative of the prosecution is to prove that the act of the second respondent in inflicting the injuries sustained by the deceased leading to her demise should come within the ambit of one or a combination thereof, of the situations envisaged by s 300(a), (b), (c)

or (d) of the Code. In our view, upon the facts and evidence adduced, the provision of s 300(c) of the same is most relevant/applicable to gauge the act of the second respondent. The provision provides:

> 300 Murder
>
> Except in the cases herein excepted, culpable homicide is murder —
>
> (a) ...
>
> (b) ...
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary cause of nature to cause death; or ...

[58] In *Public Prosecutor v Visuvanathan* [1978] 1 MLJ 159, the Singapore Criminal Court of Appeal, opined as follows on the applicability of s 300(c) of the Singapore Penal Code, which is in pari materia with our own s 300(c) of the PC:

> In our opinion cll (a) and (c) of s 300 are meant to cover different acts, ie acts done with different intentions. The cases show that cl (c) is meant to apply in circumstances where the assailant had no intention of causing death but has nevertheless intentionally (and not accidentally) inflicted a bodily injury sufficient in the ordinary course of nature to cause death. Under cl (c) once the intention to cause the bodily injury actually found to be present is proved, the rest of the inquiry ceases to be subjective and becomes purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental. As was observed by Bose J in *Virsa Singh*'s at p 476:
>
> It does not matter that there was no intention ... to cause injury of a kind that is sufficient to cause death in the ordinary course of nature.

And at p 161

> ... the question, so far as the intention is concerned, is not whether he intended ... to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question.

The matter is clarified further by Hidayatullah J in *Rajwant Singh*'s case, at p 1878:

> If the injury the offender intends causing and does cause is sufficient to cause death in the ordinary course of nature, the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not ...

Further down the court ruled:

In our judgment for the application of cl (c) of s 300 of the Penal Code, all that the prosecution need to prove is:

(1) that the accused did an act which caused the death of the deceased;

(2) that the said act was done with the intention of causing bodily injury;

(3) that the injury caused —

(a) was intended and was not accidental or otherwise unintentional; and

(b) was sufficient in the ordinary course of nature to cause death.

There is no other requirement. In our opinion the submission of counsel for the defence based on Lord Diplock's dictum that 'the prosecution must also prove that the accused intended to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death' was untenable because such a requirement would make cl (c) otiose in view of the provision of cl (a).

[59] Now, what can be inferred from the act of the second respondent in all the circumstances of the case? The evidence of PW5 as stated earlier, is uncontroverted that the second respondent had stabbed the deceased when the deceased was attempting to get hold of the *parang* held by the second respondent so that no harm is caused to any person.

[60] The second respondent aimed and stabbed the deceased at the most vulnerable and exposed part of the deceased's person, ie the centre of her chest that directly hit the most vital part of the human organ, the heart, as testified by PW8. The force he applied was considerable such that it cut through the sternum across the fourth ribs and the fourth intercostal space — see p 3 of PW8's post-mortem report, exh P24, for the full purport of the injuries sustained by the deceased. The depth of the stab wound alone which is about 22cm denotes the force that was applied to inflict the injuries. In consequence thereof the deceased had indeed suffered very serious injuries to her abdomen. Most importantly PW8 testified that '... saya cuma boleh katakan tempoh kematian adalah sejurus selepas tikaman ...'.

[61] The deceased did not fight with the second respondent and has not done anything to endanger the second respondent's life or limb. Hence, there is no reason at all for the second respondent to stab the deceased in the manner he did.

[62] In such event, in our view the stab wound inflicted upon the deceased by the second respondent were indeed intentional and that it was inflicted with the intention of causing bodily injuries upon the deceased.

[63] Hence, the next issue is whether such injuries arising out of the stab wound suffered by the deceased were sufficient in the ordinary cause of nature to cause death. PW8 had testified that the injuries suffered by the deceased were indeed grave and serious. The details of the injuries arising out of the stab wound has been discussed at para 23 above. On the facts, viewed objectively, there can be no doubt that the said injuries carried a high probability to cause death. Equally there can be no doubt that the said injuries are sufficient to cause death in the ordinary cause of nature. In fact PW8 testified that death was swift. It occurred soon after the stab wound was inflicted.

[64] In this regard it is immaterial whether the second respondent has the subjective knowledge of the consequence of inflicting such injuries upon the deceased or whether he has the knowledge that the injuries inflicted carried a high probability of causing the death of the deceased or whether he intended the direct consequence of causing those injuries upon the deceased.

[65] It does not also matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary cause of nature or whether the second respondent harboured an intention to cause the death of the accused at the material time or otherwise or that there is no knowledge that the act of the kind committed by him will be likely to cause death.

[66] Once it is establish that the second respondent intended the injuries that is sufficient in the ordinary course of nature to cause death, the act of the second respondent is murder within the ambit of s 300(c) of the PC. We do so opined without more.

[67] The second respondent's defence is untenable in the light of the medical evidence that supported the uncontroverted testimony of PW5. It has neither raise a reasonable doubt upon the prima facie case finding of the learned trial judge against him on the original charge under s 302 of the PC.

[68] For all the reasons given, we allowed the public prosecutor's appeal against the second respondent. We found him guilty upon the original charge levelled against him under s 302 of the PC. The High Court's conviction and sentence under s 304(b) of the same Code is set aside. As said earlier, in view of the second respondent's age at the time of the commission of the offence, we ordered him to be detain at the pleasure of His Majesty, the Sultan of Perak, in accordance with s 97(1) and (2) of the Child Act 2001.

The appeal against the first appellant

[69] The learned TPR did not make any submission in respect of the first respondent's acquittal and discharged under the first charge (under s 324 of the

PC). Hence, the appeal is deemed to have been abandoned.

[70] As regard to the second charge (under s 302 of the PC), the first respondent denied that he had further thrust the *parang* sticking on the deceased chest as testified by PW5. He said that he did not see the second respondent stabbing the deceased on her chest. There was a fight involving more than 15 people in front of his house. He was also assaulted with a *parang* on his head. He fled the scene for his life and took refuge at PW12's house together with his other son (DW5 — Paaventhan a/l Ramanah) and his wife. He did not know how the deceased was stabbed as at the material time he was no longer at the scene but seeking refuge at PW12's house.

[71] The second respondent testified that the first respondent was not involved in the stabbing of the deceased. He averred that after accidentally stabbing the deceased, he pulled the *parang* from the deceased's chest after the deceased fell down and ran inside PW12's house. He saw the first respondent already inside PW12's house together with his mother and brother, Paaventhan.

[72] The testimonies of both the respondents appeared to have been supported by the evidence of PW12. PW12 testified, at p 69, *Jld* 1, RR, that:

> Saya tidak nampak kenapa wanita itu terjatuh ke tanah. Dia jatuh di depan rumah saya. Lepas itu saya nampak OKT1 lari masuk ke dalam rumah saya. Yang datang dengan beberapa buah kereta berdiri di hadapan rumah saya. Pada masa itu saya belum kunci pintu pagar rumah saya. Saya nampak OKT1 memegang 1 pisau dengan tangan kanannya. Saya boleh camkan pisau yang OKT1 pegang. OKT1 menyerahkan pisau kepada saya dan suruh saya cucikan pisau itu. Pisau itu ada kesan darah. Saya ada mencuci pisau itu seperti disuruh oleh OKT1. Selepas mencuci pisau itu saya buangkan pisau itu di belakang rumah saya.

[73] From the sequence of the facts as witnessed by PW12, it appeared that moments after PW12 saw the deceased fell on the ground, PW12 saw the second respondent running into his house with the *parang* in his right hand.

[74] Hence, if it is true that the first respondent had further thrust the *parang* into the deceased's chest and then pulling it out as testified by PW5, then PW12 surely must have seen it. PW12 saw the deceased falling down but did not say anything about the first respondent being there too thrusting the *parang* further into the deceased's chest and then pulling it out. PW12 did not implicate the respondent with the stabbing of the deceased at all.

[75] There is nothing from the evidence of PW8 to suggest that the stab wound suffered by the deceased could have been caused by two persons in succession in the manner as described by PW5. PW8, at p 59, *Jld* 1, RR, merely

said:

> Berdasarkan pemeriksaan, ada sekali tikaman masuk dan keluar. Apabila objek tajam itu dicucuk masuk sekali, kemudian objek tajam itu dikeluarkan semula.

[76] Upon the totality of the evidence thrown at the first respondent, we opined that there exist a lingering doubt of the role and complicity of the first respondent in the death of the deceased. The first respondent is verily entitled to benefit from the said doubt.

[77] Hence, we dismissed the public prosecutor's appeal against the first respondent and affirmed the acquittal and discharged of the first respondent on both the charges as ordered by the High Court.

Order accordingly.

Reported by Afiq Mohamad